IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3736 OF 2005

Jugal Kishore Mehra..... .... Petitioner.

Versus

Mumbai Municipal Corporation of
Greater Mumbai & Others.... ... Respondents.

Mr. V. V. Divekar with Mr. V. M. Mahajan i/by
M/s. Divekar & Co., for the Petitioner.

Mr. A.J. Bhor for Respondent No.1.

Mr. R. A. Thoprat with Mr. V. G. Kerkar
for Respondent Nos.2 and 4.

Mr. A. G. Shaikh for Respondent No.3.

Mr. R. P. Patne, AGP for Respondent No.6.

CORAM : S. A. BOBDE, J.

DATED : 7TH JUNE, 2005.

P.C.:

Rule.

2. Learned Counsel appearing for the Respondents waive service of Rule on behalf of the respective Respondents.

3. Rule made returnable forthwith and heard by

consent.

4. By this petition, the petitioner challenges the order dated 16th April, 2005 passed by the City Civil Court at Mumbai allowing withdrawal of Suit No. 4737 of 2003.

5. The suit, a copy of which is not annexed to the petition, is admittedly filed by the Petitioner in his capacity as Chairman of the Co-operative Society. He is Plaintiff No.1 in his capacity as Chairman, as it apparent from the verification clause of the Suit. The Society itself was Plaintiff No.2. The very first sentence of the Plaint reads as follows:

> "The Plaintiffs are a society of residential flat"

An Administrator was admittedly appointed on this Society under Section 78 of the Maharashtra Co-operative Societies Act. This Administrator applied for withdrawal of the suit which has been allowed by the Court by the impugned order.

3. I see no merit in the contention raised on behalf

of the Petitioner that notice ought to have been issued to him under Order 23 Rule 1 sub-rule (5) of the Code of Civil Procedure since the Administrator was fully empowered to act on behalf of the Society in view of the Section 78(2) of the Maharashtra Co-operative Societies Act. The Plaintiff had not sued in his private capacity, but only as part of the Society. The Administrator having decided to withdraw the suit. There is no illegality in the order of the Court below allowing such a withdrawal. There is another reason why I consider it inappropriate to interfere with the impugned order is that the Petitioner applied for setting aside the order of withdrawal before the trial Court by notice of motion. This notice of motion was also withdrawn by the Petitioner, admittedly without liberty.

4. In this view of the matter, there is no reason to interfere. The Writ Petition is hereby dismissed. Rule discharged. No order as to costs.

Sd/-

(S. A. BOBDE, J.)